

To: Albright, David[Albright.David@epa.gov]
From: Coffman, Joel
Sent: Fri 1/24/2014 9:19:51 PM
Subject: RE: aquifer exemptions

I can't imagine our Region "rubber-stamping" anything like this...

From: Albright, David
Sent: Friday, January 24, 2014 12:59 PM
To: Coffman, Joel; Dermer, Michele; Robin, George; Rumrill, Nancy
Subject: aquifer exemptions

Interesting article out the GWPC meeting.

Daily News

Facing Growing Scrutiny, EPA Seeks Earlier Role To Bolster SDWA Waivers

Posted: January 24, 2014

NEW ORLEANS -- EPA is urging states and industry to involve it earlier in the process when crafting Safe Drinking Water Act (SDWA) permit exemptions for underground injection, saying the waivers are facing growing challenges from third parties and an earlier agency review role in the process could help bolster the rationale for defending the waivers.

"Our decisions on these [waivers] . . . are coming under increasing scrutiny" and interest from the public, Ron Bergman, EPA's acting groundwater chief, told the Groundwater Protection Council's (GWPC) Underground Injection Control (UIC) conference here Jan. 22.

He added that the increased scrutiny has created a greater need than in the past for states and industry to have a "strong" legal and technical rationale in defending the waivers -- which could be strengthened by earlier EPA involvement in crafting the exemptions.

Bergman said that traditionally the agency's role "has been treated as the end of the process" in approving the waivers, with states working in the primary stages with industry and only toward the end of the process seeking the agency's input. But he said EPA is eager to change that situation, saying that the agency is trying to work with states and industry "to clarify what we are looking for early in the process."

EPA has been in discussions with states on a goal of "increasing transparency and clarity in the way that we are looking at aquifer exemptions," he added. Part of the agency's review includes looking at current and future uses of the aquifers, and Bergman said involving EPA earlier would be to states' and industry's benefit.

SDWA generally prohibits waste and water disposal, mining, energy production or other activities that involve injection into underground sources of drinking water (USDWs).

But the statute allows EPA to grant an exemption where the aquifer, which may otherwise be considered a USDW, does not currently serve as a source of drinking water and cannot do so in the future, either because of contamination or because its location makes recovery of potable water economically or technologically impractical.

Final Determination

While states with primacy over their UIC programs craft the parameters of such exemptions, EPA, usually through its regional offices, makes the final determination on whether to approve decisions concerning exempted aquifers. Such waivers have been historically been routinely developed and issued by states and "rubber-stamped" by EPA, but in recent years, the agency has stalled approving several exemptions for uranium projects in Wyoming and Texas and has appeared to take a more vigorous approach.

For example, EPA deliberated for five years before approving the Texas Commission on Environmental Quality's request for an exemption for uranium mining in Goliad County, TX, but only after requiring additional monitoring data. The agency also opposed an exemption for a uranium extraction project in Wyoming, causing states to call for a more uniform policy for what the agency intends to require from states in order to approve or disapprove an exemption.

But the agency has remained relatively silent on the issue, state sources have said. GWPC, a group that represents state groundwater regulators, last year established a working group to examine the aquifer exemption and other SDWA issues and work toward potential solutions in collaboration with EPA.

Seeking the agency's input at the start of the waiver process could help in defending against lawsuits by groups who have challenged EPA's approval of state exemption decisions. For example, a group of local landowners and ranchers last year sued over EPA's approval of Texas' waiver to allow a uranium mining project to move forward within portions of an aquifer, marking a rare legal test.

The suit, *Raymond Arnold et al, v. United States Environmental Protection Agency*, pending in the U.S. Court of Appeals for the 5th Circuit, sought to vacate EPA's approval of Texas' exemption, arguing that the decision is arbitrary and capricious and in violation of SDWA and the Administrative Procedure Act.

At EPA's request, the court in a Dec. 3 order stayed the briefing schedule in *Raymond Arnold* and then issued a Dec. 9 order that remanded the case to EPA for review, but limited the remand to 60 days, slated to expire Jan. 30. --
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